

Sections 1 and 4(i) of the Communications Act to adopt regulations to implement that provision.

Finally, Sections 251(d)(3)(B)&(C) of the 1996 Act expressly limit the ability of a state regulatory body to enforce access and interconnection obligations. Those sections of the 1996 Act make clear that a state may not enforce regulations that are inconsistent with the interconnection terms and conditions that the Commission is currently establishing pursuant to Section 251(d)(1). This section clearly establishes the Commission as the primary regulator of interconnection rates, terms and conditions, and permits state regulation only to the extent that it is consistent with the standards established by the Commission. Therefore, the Telecommunications Act of 1996 confirms the Commission's plenary and exclusive authority, consistent with Section 332(c)(3) of the Communications Act, to occupy the field of CMRS rate and entry regulation.³⁴

³⁴ While the Commission continues to derive its authority over CMRS interconnection from Section 332, as a matter of equity and sound public policy, the Commission should apply the interconnection standards that it establishes for other carriers under Section 251 of the Telecommunications Act of 1996 to CMRS carriers as well. Failure to accord to CMRS carriers the same interconnection rights enjoyed by other carriers would result in a discriminatory classification, in contravention of Section 202(a) of the Act.

IV. CMRS Carriers Must Have Nondiscriminatory Access To Utility-Owned Or Controlled Poles, Ducts, Conduits, Or Rights-Of-Way

In their petitions for reconsideration, both ConEd and Florida Power argue that nondiscriminatory access to poles, ducts, and rights-of-way under Section 224(f) should exclude wireless carriers.³⁵ However, wireless carriers fit squarely within Section 224(f) and are entitled to nondiscriminatory access to poles, ducts, conduits and rights-of-way. Section 224(f)(1) provides that:

[A] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.³⁶

Section 224(a)(5) states that, for the purposes of Section 224, the term "telecommunications carrier" shall have the meaning stated in Section 3 of the Act, except the definition should not include ILECs. Section 3(44) of the Act defines a "telecommunications carrier" as "any provider of telecommunications services." Wireless carriers fit squarely within this definition and, thus, are entitled to nondiscriminatory access under Section 244(f) of the Act.

³⁵ ConEd Petition at p.11-12; Florida Petition at 24-26. 47 U.S.C. 153(44).

³⁶ 47 U.S.C. § 224(f)(1) [emphasis added].

With the great number of new wireless services being developed and implemented, access to antenna sites has never been more critical. Throughout the nation, carriers are facing difficult facility siting and access issues, including zoning and other local ordinances aimed at reducing the ability of wireless carriers to site antennas. A partial answer to this problem is the access to existing utility sites that could also be used as antenna sites. Since these sites have dual purposes, they lessen the number of towers that need to be constructed and allow wireless carriers to more adequately meet coverage requirements. To be successful, these sites, poles, ducts, conduits or rights-of-way must be accessible on a nondiscriminatory basis for all carriers. If not, carriers will be able to negotiate access where they are the only carrier at the utility site. This type of discriminatory practice is unnecessary, will lead to unfair competitive practices and will not benefit customers of wireless communications. Accordingly, wireless carriers, as telecommunications carriers, must be entitled to mandatory access under Section 224 of the Act.

V. Conclusion

WHEREFORE, for the reasons stated above, to the extent discussed in these comments, PageNet respectfully requests that the Commission deny the Kalida petition and portions of the petitions of LECC, Florida Power and ConEd. In addition, PageNet

requests that the Commission recognize its jurisdiction over
CMRS-to-LEC interconnection under Section 332 of the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that a copy of the foregoing **"Comments In Response To Petitions For Reconsideration"** was sent, this 31st day of October 1966, by U.S. mail, first class, postage prepaid, to:

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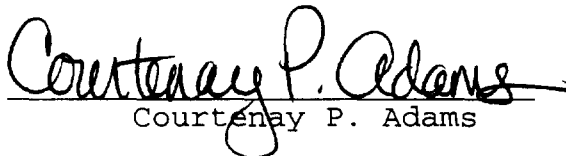
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